Editor's note: Reconsideration granted; decision modified by 65 IBLA 76 (June 23, 1982)

RICHARD W. ECKELS

IBLA 81-145 Decided February 22, 1982

Appeal from decision of the Idaho State Office, Bureau of Land Management, dismissing protest against issuance of oil and gas lease I-14795, and rejecting oil and gas lease offer I-15821 in part.

Set aside and hearing ordered.

1. Oil and Gas Leases: Bona Fide Purchaser

   A bona fide purchaser must have acquired his interest in an oil and gas lease in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. The test of notice of a superior right is whether the facts are sufficient to put an ordinarily prudent man on inquiry which if followed with reasonable diligence would lead to discovery of defects in title or equitable rights of others affecting the lease.

2. Oil and Gas Leases: Bona Fide Purchaser

   The knowledge of the assignee's agent and/or employee acting for the principal in connection with obtaining the lease is generally attributable to the assignee in determining whether the assignee qualifies as a bona fide purchaser.

3. Oil and Gas Leases: Bona Fide Purchaser

   Payment of valuable consideration prior to knowledge or notice of a superior right is a necessary element of bona fide purchaser status.

APPEARANCES: Kent E. Peterson, Esq., for appellant/protestant; David B. Soper, Esq., for respondent, Phillips Petroleum Company; Georgia Dee Mattison, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Richard W. Eckels brings this appeal from a decision dated October 17, 1980, by the Idaho State Office, Bureau of Land Management (BLM), which declared the Phillips Petroleum Company (Phillips) a bona fide purchaser of oil and gas lease I-14795 and rejected appellant's lease offer, I-15821, for lands in conflict therewith.

Noncompetitive oil and gas lease offer I-14795 was filed by Georgia D. Mattison with BLM on September 18, 1978. The offer described certain lands totaling 320 acres. Appellant Eckels filed a noncompetitive oil and gas lease offer, I-15821, with BLM on August 22, 1979, describing 2,560 acres, including the land embraced in the Mattison lease offer. Lease I-14795 was issued by BLM to Mattison on July 16, 1980, with an effective date of August 1, 1980. Subsequently, on August 14, 1980, Mattison executed an assignment of the lease to Phillips which was filed with BLM on August 20, 1980, and approved on August 25, 1980, effective September 1, 1980. By decision of August 25, 1980, BLM rejected appellant's lease offer, I-15821, to the extent it described lands in conflict with those included in lease I-14795.

On September 8, 1980, BLM issued another decision acknowledging that lease I-14795 issued in error in violation of the 640-acre rule because at the time the subject lease offer embracing 320 acres was filed with BLM there was contiguous land available for leasing which was not described in the offer. The BLM decision of September 8, 1980, therefore revoked the prior rejection of appellant's lease offer and required Mattison and Phillips to show cause why lease I-14795 should not be canceled. Phillips was called upon by that decision to submit evidence with respect to whether it acquired its interest in the lease as a bona fide purchaser.

In response to information submitted by Phillips, BLM issued the decision of October 17, 1980, which is the subject of this appeal. In that decision, Phillips was found to be a bona fide purchaser and appellant's offer was rejected to the extent of its conflict with lands embraced in I-14795.

On appeal appellant asserts that lease I-14795 was issued contrary to statute and the regulations of the Department of the Interior, that the signing officer was without authority to issue the lease and that, therefore, the lease was void and could not be revived by assignment to a bona fide purchaser. Further appellant alleges Phillips did not furnish facts from which it could be determined if Phillips was a bona fide purchaser for value without notice. Appellant contends

Phillips had actual and constructive knowledge that the lease offer violated the 640-acre rule of isolation prior to the date that it acquired the assignment from Mattison. Appellant complains that he was not given an opportunity to "be present, to present evidence or in any way to inquire into the bona fides of Phillips prior to the time the BLM determined that Phillips was a bona fide purchaser." Finally, appellant requests a hearing to determine whether Phillips was a bona fide purchaser of the lease.

Respondent Phillips has asserted in its answer that a purchaser of a lease issued in violation of the 640-acre rule may qualify for bona fide purchaser protection. Further, Phillips alleges that although it may be held to have constructive knowledge of certain lease records with respect to I-14795, the case of Southwestern Petroleum Corp. v. Udall, 361 F.2d 650 (10th Cir. 1966), states the controlling law to the effect that the assignee is not held to have constructive knowledge of the status of lands other than those embraced in the lease such as would impute knowledge of a defect in the lease application resulting from the status of such lands. Respondent further alleges that no prima facie showing of possible violation of the regulation on the part of the bona fide purchaser has been shown and, thus, no hearing is required on the issue under the terms of the relevant statute. 30 U.S.C. § 184(i) (1976). Respondent Georgia Mattison has also stated her opposition to the appeal by Eckels.

The regulations establish a minimum size of 640 acres for noncompetitive oil and gas lease offers for public domain lands except where the land in the lease offer is surrounded by lands not available for leasing. 43 CFR 3110.1-3(a). A noncompetitive over-the-counter oil and gas lease which describes less than 640 acres is properly rejected where the offer failed to include other adjoining lands which were available at the time the offer was filed even though such lands may have been included in prior outstanding lease offers. Douglas R. Willson, 52 IBLA 246 (1981). Further, a junior offeror is entitled to seek administrative cancellation of a lease issued to a senior offeror and to have the lease issued to itself where the lease issued to the senior offeror in violation of the regulations. Boesche v. Udall, 373 U.S. 472 (1963).

However, the statutory protection of the bona fide purchaser of an oil and gas lease provides that the right to cancel an oil and gas lease shall not be applied in such a manner as to adversely affect the title or interest of a bona fide purchaser of a lease or interest therein held by a qualified party even though the lease or interest therein held by the assignor or a predecessor in title may have been subject to cancellation. 30 U.S.C. § 184(h)(2) (1976).

Contrary to appellant's contention, the assignee of a lease which is subject to cancellation for violation by the offeror of regulations, such as the 640-acre rule, may invoke the statutory protection afforded

bona fide purchasers. This may be distinguished from the assignee of a noncompetitive lease which could not lawfully have been issued to any noncompetitive lease offeror and which is thus a nullity to which bona fide purchaser status cannot apply to prevent cancellation. See Skelly Oil Co., 16 IBLA 264 (1974), rev'd on other grounds, Skelly Oil Co. v. Morton, Civ. No. 74-411 (D.N.M., Aug. 7, 1975); Oil Resources Inc., 14 IBLA 333 (1974). Thus, the issue raised by this appeal is whether respondent Phillips, assignee of Mattison's lease, qualifies as a bona fide purchaser of the lease.

[1] In order to qualify as a bona fide purchaser, an assignee must have acquired his interest in good faith, for valuable consideration, and without notice of the violation of Departmental regulations. Southwestern Petroleum Corp., supra at 656. The test of notice of a superior right is whether facts are sufficient to put an ordinarily prudent man on inquiry which, if followed with reasonable diligence, would lead to discovery of defects in title or of equitable rights of others affecting the lease. Id. at 657; see O'Kane v. Walker, 561 F.2d 207, 211 (10th Cir. 1977).

The court in the Southwestern Petroleum Corp. case held that in the absence of knowledge of a violation of the regulations an assignee could presume regularity in the issuance of the lease by BLM where the BLM serial register pages, tract book, and plat show the particular lands to be available for leasing and the particular lease to be in good standing. The assignee was not bound to make a searching examination of BLM records pertaining to other lands in order to determine whether a defect in the lease application may have existed. Southwestern Petroleum Corp., supra at 657. However, these principles are not by themselves sufficient to resolve the appeal on the record in this case.

[2] Appellant alleges that Phillips had actual knowledge that assignor Mattison's lease offer violated the 640-acre rule prior to the assignment. Both files contain copies of oil and gas plats showing the extent of both appellant's lease offer and Mattison's lease offer, that Mattison's lease offer embraced less than 640 acres, that the Mattison lease offer is in conflict with appellant's lease offer, and that appellant's lease offer, although junior in time of filing, embraces lands adjacent to but not described in Mattison's lease offer which were subject to oil and gas leasing. It is further alleged that a party disclosed by the case records to have examined the case files for both lease offers at times both before and after issuance of the Mattison lease was an agent of Phillips and, thus, that Phillips had actual knowledge of the contents of the files. Further, appellant alleges that a Phillips Petroleum Company map prepared by one of its employees in September of 1979 showed both the Mattison lease offer and appellant's lease offer, disclosed that the former embraced less than 640 acres, and further disclosed that appellant's lease offer embraced land adjacent to but not included in the Mattison offer.

The knowledge of the agent generally constitutes knowledge of the principal -- an assignee of a lease who might otherwise qualify as a bona fide purchaser loses that protection if the agent acting for the principal in obtaining the lease has knowledge which would disqualify him as a bona fide purchaser. W. H. Bird, 72 I.D. 287 (1965). Appellant contends that Phillips thus had actual knowledge of facts which would have caused an ordinarily prudent man to make further inquiry which would reveal that Mattison's lease offer was defective. Neither the affidavit of Phillips supplied to BLM nor the answer filed on appeal responds to these allegations.

[3] Payment of valuable consideration is one of the elements of bona fide purchaser status and thus the time of actual payment of consideration from the assignee to the assignor is critical. 77 Am. Jur. 2d, Vendor and Purchaser § 706 (1975); see Inexco Oil Co., 54 IBLA 260 (1981) 1/ ; Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981) 2/ ; cf. Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980) (general rule noted but court did not rule on whether actual payment was a prerequisite). The record does not disclose whether valuable consideration has been paid by Phillips to the assignor, and if so, when this was accomplished. See O'Kane v. Walker, supra.

Consequently, it must be concluded that material issues of fact not resolved by the existing record have been raised, that a prima facie showing of possible knowledge on the part of the alleged bona fide purchaser that the lease was issued to Mattison in error in violation of the regulations has been presented as required by 30 U.S.C. § 184(i) (1976), and, hence, a hearing on the issues is properly ordered. Accordingly, the decision appealed from is set aside and the case is referred to the Hearings Division, Office of Hearings and Appeals, pursuant to 43 CFR 4.415, for assignment of an Administrative Law Judge to conduct an evidentiary hearing and issue a decision on the issue of whether respondent Phillips is a bona fide purchaser of the Mattison lease. Specific issues of fact to be considered include the question of whether consideration was paid by Phillips to the assignor, and, if so, when this payment was accomplished, as well as the question of whether Phillips had knowledge of such facts as would preclude it from bona fide purchaser status prior to the making of the assignment and the payment of consideration therefor. The burden of proof shall be upon appellant. The decision of the Administrative Law Judge shall be subject to the right of appeal to the Board by any party adversely affected thereby. 43 CFR 4.410.

1/ Suit for judicial review pending sub nom. McCracken v. Watt, Civ. No. C81-0212 (D. Wyo., filed July 27,1981).

2/ Aff'd sub nom. Geosearch v. Watt, Civ. No. C81-208K (D. Wyo., Jan. 11, 1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case referred to the Hearings Division, Office of Hearings and Appeals, for assignment of an Administrative Law Judge to conduct an evidentiary hearing and make a decision in accordance with this opinion.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Edward W. Stuebing
Administrative Judge